IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present
Madam Justice Kashefa Hussain

Civil Revision No. 4004 of 2008

Md. Hafizur Rahman alias Bazu Mia
.....petitioner
-Versus-
Rawsanara Begum and others
------- Opposite parties.

Mrs. Nahid Yesmin with
Mr. Iqbal Hasan, Advocates
------ For the petitioner

Mr. Md. Mokbul Ahmed, Advocate
------- For the Opposite Parties.

Heard on: 24.01.2019, 03.02.2019, 05.02.2019, 06.02.2019, 07.02.2019, 12.02.2019 and
Judgment on 17.02.2019

Rule was issued in the instant Civil Revisional application calling upon the opposite parties No. 2,4,5 and 6 to show cause as to why the impugned judgment and decree dated 29.06.2008 of the learned Additional District Judge, 1st Court, Brahmanbaria in Title Appeal No. 112 of 1994 reversing that dated 06.03.1994 of the learned Subordinate Judge (Joint District Judge) 1st Court, Brahmanbaria in Title Suit No. 170 of 1985 should not should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The present petitioners and proforma opposite party No. 18 instituted Title Suit No. 170 of 1985 in the court of Sub Judge (Joint District Judge), 1st court Brahmanbaria pleading opposite parties as defendants. The trial court after hearing both sides upon adducing evidences and depositions allowed the suit by its judgment and decree dated 06.03.1994. Being aggrieved by the judgment and decree of the trial court dated 06.03.1994 the contesting defendant in the suit filed Title Appeal No. 112 of 1994 before the court of District Judge, Brahmanbaria which upon transfer was heard by the Additional District Judge, 1st Court, Brahmanbaria. The Appellate Court after hearing both sides allowed the appeal by its judgment and decree dated 29.06.2008 and thereby reversed the judgment and decree passed by the trial court earlier.

The plaints case inter-alia is that Kalikumar was owner of 8 anas share of the suit land along with other lands and the rest 8 anas was owned by Chandra Mohon Chackrabarti, Guru Prasanna Chackrabarti and Padmapani Chackrabarti C.S. Khation No. 95 was duly prepared in respect of the suit land and other lands in their name. In that khatian Kali Kumar is shown as possessor of “Ka” and Chandra Mohon and others are shown as possessor of “Kha” schedule. Kali Kumar died leaving behind his only son Jagadish Chackrabarti. Jagodish became the owner and possessor of the suit land and other lands and during S.A.

operation S.A Khatian No. 203 was prepared duly in respect of the suit land in his name with other Co-sharers and published thereupon. But .32 acres of land was shown by mistake instead of .53 acres of land in plot No. 149 of the aforesaid Khatian. C.S tenant Chandra Mohon left behind his heirs Guruprashanna and Padmapani. Guruprashanna left for India partition of India in the year 1947 and he died leaving behind his son Bhabotosh Chackrabarti the proforma opposite party No. 8. Neither Vabotosh nor his father ever came back to the then East Pakistan or present Bangladesh. Padmapani also went to India in 1947 and he died leaving behind his son Badal Chachrabarti the proforma defendant No. 10 Chandra Mohon. Guruprasanna and Padmapani never/ever possessed the suit land. Jogodish left behind only Suvash Chackkrabarti the proforma defendant No. 9 as his heirs. Defendant No. 9 sold .47 acres of land from plot No. 171 and .32 acres of land from plot No. 157 to plaintiff No. 1 Hafizur Rahman vide Registered Saf-Kabala deed dated 02.10.1979. There after Defendant No. 9 sold .53 acres of land from plot No. 149 to plaintiff No. 2 Md. Samsuddin vide Saf-Kabala deed dated 18.10.1979. From that time the plaintiffs were and are in possession of the suit land. Defendant No. 2 and 3 in 1981 filed two cases being Nos. 126 and 127 in the Ramrail Union Parishad Village Court and obtained ex-parte decree, but those were reversed by the decree dated 14.08.1982 by 2nd Munsif Court, Brahmanbaria. But on 11.01.1983 the said Munsif Court recalled

the decree dated 14.08.1982. There after the plaintiffs filed two Civil Revisions being Civil Revision No. 13 and 14 of 1983 respectively before The District Judge, Comilla. The learned District Judge, Comilla was pleased to set-aside the decree dated 11.01.1983 and upheld the decree dated 14.08.1982. Due to decentralization of judiciary Civil Revision No. 13 was transferred to District Judge, Brahmanbaria and learned District Judge was pleased to set aside the decree dated 11.01.1982 and upheld the decree dated 14.08.1982. Defendant No. 2 and 3 long before filed C.R. Case, 3242-C of 1979 and 152-C of 1980 under section 379 of the Penal Code in the Brahmanbaria Mahakuma Magistrate Court against the plaintiffs and others, but all the accused were acquitted by the concerned court. That defendant No. 6, the brother of plaintiffs managed to get the plaintiff's case file from the Clerk of the plaintiff's Advocate, where the original purchase deed of the plaintiff was. But Defendant No. 6 always denied the above facts. Principal defendants did not have right and title and never had possession on the suit land. Principal defendants on September 1985 disclosed that they purchased the suit land vide several Kabala deeds. After obtaining the disputed kabala deeds on 29.09.1985, 07.10.1985 and 09.11.1985 and on 14.11.1985 the principal defendants threatened to dispossess the plaintiffs from the suit land. Thus from the above dates the plaintiffs cause of action arose. Defendant No. 8 went to India after 1947 and never came back and as such the kabala deeds

given in the 2nd and 4th schedule to the plaint, were never executed by the defendant No. 8. Similarly the deed mentioned in 5th schedule to the plaint was never executed by the defendant No. 4 and 6 and they never became the owner and possessor of the suit land pursuant to the deeds mentioned in 6th and 7th schedule to the plaint, because their predecessor never accrued any right and title and consequently the plaintiffs were constrained to filed the instant suit for declaration of title and cancellation of instruments.

The defendant Nos. 2,4,5 and 6 entered appearance and contested the suit by filling written statements, but defendant No. 4 and 6 contested in preemptory hearing contending inter alia that Guruprashanna was owner and in possession of the suit land and died in the then Pakistan. He died leaving behind his heir Vabotosh the defendant No. 8, who never went to India. He being owner and possessor of his father's land sold .32 acres of land from suit plot No. 249, .47 acres of land from Plot No. 171 to Nabadip and .17 acres of land from plot No. 157, .21 acres of land from plot No. 149 to Shamsul Alam and .15 acres of land from plot No. 157 to Abdul Mannan vide three different kabala deed dated 14.07.1969 and handed over possession to them. Nabadip sold .32 acres of land from plot No. 149 to Abdul Aziz and Khorshed Mia, but defendant No. 2 became owner of that very .32 acres through pre-emption case and aforesaid land was

sold to Fulmia the Defendant No. 4 vide Kabala dated 06.10.1979. Defendant No. 1, Abdul Mannan purchased .15 acres of land from Plot No. 157 from defendant No. 8 and sold the same land to defendant No. 2 vide kabala dated 03.11.1969. Nabadip sold .31 acres of his purchased land from plot No. 171 to defendant No. 6 vide kabala deed dated 27.12.1982. As such the contesting defendants prayed for dismissal of the suit of the plaintiffs.

Learned Advocate Mrs. Nahid Yesmin with Mr. Iqbal Hasan, Advocates appeared on behalf of the petitioner while learned Advocate Mr. Makbul Ahmed represented the opposite parties.

Learned Advocate Mrs. Nahid Yesmin for the petitioner submits that the trial court upon correct findings of facts relying on proof of possession of the plaintiff in the suit land correctly allowed the suit but the appellate court drawing upon wrong conclusion reversed the judgment of the trial court and thereby allowed the appeal causing miscarriage of justice. She contends that the appellate court upon misinterpretation of law disbelieved the plaintiff's purchase kabala deeds given that the kabala deeds of the plaintiff were proved by calling upon the volume and the record keeper from the sub registry office. She points out that as is evident from the records the volume of the deed of 1979 was called by the trial court itself to be presented as evidence of valid

execution of the certified copy of the kabala deed. She contends that the appellate court disbelieved the plaintiff's kabala deeds upon ignoring the express provision of law under section 63 and section 71 of the Evidence Act, 1872. She further submits that Section 63 of the Evidence Act expressly allows the production of certified copy of an original document if for any reason the original document cannot be produced before a court. She assails that in this case the original kabala could not be produced due to malafide collusion between the defendant No. 6 and the other defendants. She also submits that the scribe of the deed being already dead during trial, subsequently the Trial Court called for the volume book of the plaintiff's kabala deeds along with the record keeper of the sub-registry office who is PW- 3 in the suit she assails that the record keeper of the sub-registry office consistently certified regarding the validity of the purchase kabala deed of the plaintiffs. She further submits that section 71 of the Evidence Act 1872 expressly provides that if the attesting witness denies or does not recollect the execution of any document, in that event the execution of such document may be proved by other evidence. She agitated that the relevant volume of the kabala deeds and the depositions of the PW-3 the record keeper of the volume falls within the definition of other evidence and is evidence enough to prove the validity of the kabala deed of the plaintiff. She submits that the appellate court upon misinterpretation of the relevant express provision of section 71

of the Evidence Act 1872 including the other provisions of the Act ignored the evidence by way of the volume book and also wrongly ignored the deposition of the record keeper from the sub-registry office. In support of her submissions regarding the adequacy of the volume book and the record keeper as credible evidences pertaining to the plaintiff's purchase deed, she cited a decision of our Apex Court in the case of Abdul Quddus Vs Yousuf Ali reported in 143 BLC (AD) 2009 page- 132. She next submits that one Salim Mia and Renu Mia were attesting witness and identifiers of the kabala deed of the plaintiff. She continues that however during appeal hearing in the appellate court the attesting defendant in the suit produced some affidavits which DW- 6 Renu Mia and DW-5 Salim Mia is supposed to have subsequent to the execution of in Deed sworn before the Magistrate Court to the effect of denying their signature in the kabala deeds of the plaintiffs. She takes me to the records of the instant case and points out that the trial court's judgment was passed on 06.03.1994 and appeal against such judgment was filed in the same year 1994. She draws this court's attention to the fact that the two affidavits which were produced in the appellate stage as Exhibit - ঞ ও ঞ-১ were relied upon as evidences to the effect that Salim Mia and Renu Mia were not witnesses to the Kabala Deeds and submits that the date of the two affidavits shown to be 29.09.1984 and 30.07.1985 respectively although from the records she points out that the

original title suit was filed after the so called affidavit by DW-5 and DW-6 Salim Mia and Renu Mia. She agitated that the filing of the affidavit shown to be back dated even before filing of the original suit and document that also at the appellate stage and not during trial are proof enough that these affidavits are not genuine documents but only subsequent creations upon practicing deceit. She argues that Exhibits- ঞ ও ঞ-১ supposedly sworn prior to the suit, if they were genuine documents at all those could and should have been produced as evidences during trial and not at the appellate stage as late as in the year 2006. On the issue of possession she submits that the opposite parties could show possession only in respect of 32 decimals of plot No. 149 only. She contends that from Dag No. 157 and Dag No. 171 the opposite parties could not show any evidence of possession. She continues that from the records it is seen that the order of delivery of possession from the court in favour of the defendant opposite parties upon which the opposite parties are also placing their reliance regarding title of the suit land, she contends that as it appears from the records the order of delivery of possession is with to regard 32 decimals of land in dag No.149. She contends that the Decree with regard to 32 decimals of land with regard to Dag No. 149 was obtained in 1974 but delivery of possession (জারী) was given in the year 1986 which is after filing of the original suit. She also submits that Exhibit- 'ছ' which was produced as the order of delivery of possession itself shows that

there is no signature of any witness in the said order. She submits that the plaintiff could prove their possession upon producing the rent receipts in respect of all the plots in the suit land those being Dag No. 149, Dag No. 157 and Dag No. 171 respectively. In support of her submissions as to the validity of the kabala deeds relying upon the evidence and deposition of the volume book and the deposition PW-3 and the admissibility of the certified copies of public document as secondary evidence, she cites some decisions of our Apex Court and this court respectively, those being in the case of BEPZA Vs Abdul Mannan reported in 66 DLR (AD) (2014) page-86, in the case of Kamal Uddin Vs Abdul Aziz reported in 56 DLR (2004) page- 484, in the case of Md. Rafiq Vs Md. Zahur Nasir reported in 8 DLR(W.P. Lahore 1956) page- 56. As to the deposition of the DWs. she submits that DW-3 is not an independent witness since he is an uncle of the DW-1 and therefore his deposition supporting the defendant's claim of possession in the 31 decimals of land from plot No. 171 which they claim to have purchased from Nabadip such deposition cannot be relied upon since DW-3 is an uncle of the DW-1 and a close relative and therefore is not an independent witness. She also submits the DW-3 could not also give provide any specification on the suit land in his deposition. She concludes her submission upon assertion that the trial court upon correct findings and upon proof of possession of the plaintiff relying upon evidences both documentary and oral by

way of rent receipts depositions etc. correctly came upon their finding as to the validity and genuineness of the kabala deeds of the plaintiff, but the appellate court upon total non consideration of the evidences and misinterpretation of the law gave an incorrect finding causing serious miscarriage of justice to the detriment of the plaintiff petitioners. In the light of her submissions and the decisions cited she concludes upon prayer that the judgment of reversal passed by the appellate court be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Md. Mokbul Ahmed along with Mr. Subrata Bardhan on behalf of the opposite parties No. 2,4,5 and 6 submits that the appellate court upon correct interpretation of the law and appraisal of the evidences on record came to their findings and correctly reversed the wrong findings of the trial court and therefore the judgment and decree of the appellate court does not call for interference in revision and the Rule be discharged for ends of justice. By way of cotroverting the claim of the petitioner he submits that the plaintiff did not place the original copy of their kabala deed deliberately since it is a created document only and not an original deed. He submits that the plaintiff could not produce any attesting witness to prove their case as to the genuinety of the deed. He argues that the volume book consisting the registry of

the deed and the deposition of the record keeper as PW-3 in the suit is not an admissible or credible evidence in the eye of law to prove the genuinety of a registered document. In this context he cites some decisions those being the decision in the case of Husan Ali Vs Azmaluddin reported in 14 DLR (1962) page- 392, in the case of Sova Rani Guha Vs Abdul Awal Mia reported in 47 DLR (AD)(1995) page-45 and in the case of Abdul Malek Sarkar Vs. Government of Bangladesh reported in 1983 BLD Vol. III page-171. He assails that even if the kabala deeds were registered nevertheless that is not a conclusive proof as to the genuinity of the document itself. In support of his contention he cites a decision in the case of Kamal Uddin Vs Abdul Aziz reported in 56 DLR (2004) page-485. He submits that the predecessor of the defendant obtained delivery of possession in Dag No. 149 arising out of a court order. He next submits that the petitioner even having full knowledge of the court order of delivery of possession however never made any objection in a higher forum against the said order of the delivery of possession 32 decimals of land in Dag No. 149. Learned Advocate for the opposite parties submits that it is obvious from the records that the plaintiff Hafizur Rahman alias Hefzu Miah was himself a witness to the deed following the preemption case. He submits that the plaintiffs are also aware of the order in the preemption case in favour of the defendant No. 2 and are aware of the subsequent transfer of the said plot to the defendant No. 4 and

are further aware of the possession of the defendant opposite parties in the suit land, but however the plaintiff never raised any objection to the possession of the said defendant No. 4 in the suit land. In this strain he continues that therefore they are estopped against raising any question against the title of the possession of the defendant at this stage. He next submits that the affidavit sworn by Salim Mia and Renu Mia cannot be ignored and they are proof that the deeds of the plaintiff are created documents, since both Salim Mia and Renu Mia denied the signature in the deed and therefore the denial by way of affidavit before a magistrate is adequate proof of the validity and signature of the plaintiffs' kabala deeds. The learned Advocate for the opposite parties persuades that the defendant No. 5 Salim and Renu Mia were not witnesses as such to the deed given that it appears from Exhibit-3 which is the plaintiff's deed that Salim Mia and Renu Mia were (ইসাদী) not "witness". He submits that Salim Mia and Renu Mia are identifiers of the deed and not witnesses. He also submits that the plaintiffs could not at any point either during trial or at the appellate stage prove that the predecessor of the defendants had left for India and which is reflected in the findings of both courts below to the effect. He also submits that Salim Mia himself deposes during appeal that the signature in the kabala deed of the plaintiff was not his and Renu Mia's son identified the signature of his father in the affidavit. Relying upon his submissions and the decisions cited by him he

concludes that the judgment of the appellate court being correctly decided upon reversing that of the trial court, the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocate from both sides perused the application and materials on record including the judgments of the courts below. From perusal it transpires that the trial court basically decreed the suit relying upon proof of the veracity of the kabala deeds of the plaintiffs. It appears that the trial court called upon the relevant volume (বালাম বই) of the said deed and upon further relying on the deposition of the record keeper who was presented as DW-3 in the suit.

Upon examination it is manifest that both parties that is the plaintiffs and contesting defendants claim that there was an amicable partition of the suit land between the original C.S. recorded owners. The plaintiffs' claim that their predecessor being Kali Kumer Chakrabarti was the owner of 8 anas in the C.S. Khatian and subsequently upon amicable partition between him and the owner of the rest 8 anas of the C.S. Khatian came to own and obtain title to the suit land. It is also the claim of the contesting defendants that their predecessor being the C.S. khatian owner of another 8 anas of land ultimately became owners of the suit land by dint of an amicable partition between the predecessors of both parties. It is the findings of the courts below and is also revealed upon this court's scrutiny into the

records that although both parties claimed their title to the suit land by way of amicable partition, but however, no such amicable partition could be proved by either party.

It is further claim of the plaintiffs that the predecessor of the defendants left for India long before the execution of the kabala deeds were claimed and relied upon by the defendant. But however, it appears from the judgments and the records that the plaintiffs could not prove that the defendants left for India. On the other hand the defendants also claimed that their predecessor did not leave for India. But nevertheless the defendants also could not prove by adequate evidence that their predecessor never left for India either by way of document or oral evidences. It is a settled principle of law that the person or persons who claims or relies on something the onus of proof is on the person or persons making the particular claim or claims. In this case neither parties could prove their respective claims. On the one had the plaintiffs claim of the predecessors of the defendant having left for India, while on the hand the defendant claim of their predecessors not having left for India. Furthermore, it is evident that the original source of claim by the defendants of Title to the Suit Land traces its source from their predecessors in interest transferring the land by way of transfer by Kabala Deeds to the defendants. Amidst such claims, it is obviously the Defendant (opposite parties') duty and liability to prove that the

Defendants were living in this country on the date the Kabala Deeds are claimed to have been executed.

However, the appellate court mentioned that the S.A. Khatian appeared in the name of the predecessors of the defendants. In pursuance it relied upon the S.A. Khatian and the appellate court found that the S.A. Khatian is proof that the predecessors of the defendant did not leave for India since their names appeared in the S.A. Khatian which was prepared much later.

It is a matter of record and fact that S.A. record was updated in the early 1960s. It should be also noted that the plaintiff's kabala deed are much later being in the year 1979 and some other deeds are even later respectively. It is my considered opinion that although the plaintiffs could not give any accurate date of the defendants-predecessors departure from this country nevertheless since the defendants also could not by any evidence definitely prove that their predecessor did not leave the country, in such circumstances, the S.A. record prepared in the early 1960s cannot be relied upon. It may be reasonable to assume that since the S.A. record was prepared in the early 1960s and the deed of the plaintiffs were claimed to be executed much later, therefore only their names in the S.A. Khatian which was prepared in the early 1960s cannot be conclusive evidence that

the predecessor of the defendants did not leave for India at any time prior to the plaintiffs kabalas.

It also transpires that the trial court further relied upon the rent receipt produced by the plaintiff with regard to the suit land in dag No. 157, dag No. 171 and dag No. 149 and concluded that the plaintiff proved their possession and title to the suit land.

The appellate court apparently disbelieved the kabala deeds of the plaintiffs mainly on the ground that the plaintiffs could not produce the certified copy of the kabala deed and the plaintiff could not prove the certified copy of their kabala deed by adequate and admissible evidence.

In my considered opinion the appellate court's findings on the kabala deed of the plaintiff is not correct. I have perused the relevant provisions of law particularly section 63 and section 71 of the Evidence Act, 1872. Section 63 of the Evidence Act 1872 allows production of certified copy as secondary evidence if the original is not available for any matter or for any reason. The learned Advocate for the opposite parties contends that a certified copy in the absence of any attesting witness cannot be accepted as credible evidence in the eye of law. In support of his submissions he cited a few decisions inter alia in the case of Sova Rani Guha Vs Abdul Awal Mia reported in 47 DLR (AD) (1995) page-45 where in the relevant principle is reproduced here under:

> "A party producing secondary evidence of a document is not relieved of the duty of proving the execution of the original. Even where a document is exhibited without objection the Court is to be satisfied as to its execution."

The learned Advocate for the opposite parties also cited a decision in the case of Abdul Malek Sarkar Vs. Government of Bangladesh reported in 1983 BLD Vol. III page-170 where in the relevant principle is reproduced here under:

> "(a) Registered Kabala- Question of presumption of its genuineness – In the absence of proof of its due execution registered kabala by itself does not raise any presumption off its genuineness."

On the other hand learned Advocate for the petitioner also cited some decisions in support of her contention that the kabala deed was successfully proved following the provisions of section 63 and section 71 of the Evidence Act 1872. She cited a principle from the case of Md. Rafiq Vs. Md. Zahur Nasir reported in 8 DLR (W.P. Lahore 1956) page-56, where in the relevant principle is reproduced here under:

> "Evidence Act (I of 1872), S. 68 Attesting witness- His production only necessary where the dispute regarding execution is between the maker of document and the person in whose favour it was executed."

In support of her contention she also cited a decision in the case of BEPZA Vs Abdul Mannan reported in 66 DLR(AD) (2014) page- 86 where in the relevant principle is reproduced here under:

> "Evidence Act (I of 1872)
>
> Section 63 and 65
>
> Secondary evidence- Admissibility of Secondary evidence is regulated by section 63 of the Act. Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person legally bound to produce it, or when the existence, condition or contents of the original have been proved to be admitted in writing by the

person against whom it is proved or by his representative in interest."

I have perused the decisions cited by both sides and I have also perused the relevant laws section 71 of the Evidence Act 1872. Section 71 of the Evidence Act,1872 is reproduced hereunder:

> **71. Proof when attesting witness denies the execution-** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Upon perusal into the relevant provisions of law and the decision cited it is my considered opinion that in the absence of attesting witnesses the genuineness or veracity of a deed can be proved by "Other Evidence" also. It may be reasonable to assume that "other evidence" as expressed in section 71 of the Evidence Act, 1872 also contemplates the relevant volume (বালাম বই) of the deed in an appropriate case and it also includes the depositions and evidence given by a record keeper from the sub-registry office. Therefore in my considered opinion the deeds of the plaintiff were successfully proved by way of the volume book (বালাম বই) produced before the trial court and from the deposition the PW-3 who is the representative from the sub-registry office.

The opposite party persuaded that DW-5 Salim Mia himself deposed during appeal that he was not a witness to the deed and that furthermore Salim Mia and Renu Mia swore affidavit before the Magistrate wherein they denied being attesting witnesses to the plaintiff's kabala deeds. DW-5 Salim Mia although during appeal deposed that he was not a witness to the plaintiff kabala deed, nevertheless neither of the courts below nor the defendants made any application to ascertain the signature of the defendant No. 5 Salim Mia and Renu Mia under the provisions of section 73 of the Evidence Act 1872.

On this point it may be significant to note that the two evidences upon which the opposite parties placed their reliance on the claim that the kabala deeds of the plaintiffs are not genuine deeds, which are Exhibit- ঞ and ঞ-১ were produced much later in evidence during appeal in appellate stage in the appellate court. It is also obvious from the records that these affidavits were filed much earlier during 1984 to 1985. Strangely enough, these two affidavits even though they were filed earlier to the original suit they were not produced as evidence during trial. In my opinion it is not unreasonable to assume that such conduct of the defendant opposite parties indicate that these two affidavits were created by the defendants at a later time and that they are not genuine affidavits and that the defendants did not come with clean hands.

It appears from the record and also from the submission of the advocate for the opposite parties that there was a preemption case which was filed by the defendant No. 2 as preemptor and there was judgment and order in that case whereby the defendant No. 2 purchased 32 acres of land from dag No. 149 and sold the same to the defendant No. 4. It also appears from the record that the plaintiff was an attesting witness in the deed of the defendant No. 2. There is also an order of delivery of possession in favour of the same defendant which is on record with regard to the 32 acres of land in Dag No. 149.

It is my considered view even that although the plaintiff successfully proved the genuineness and veracity of the kabala deeds, but nevertheless as it appears from the records that pursuant to the preemption sale followed by delivery of possession in 32 acres of land dag No. 149, for whatever reasons of its own whatsoever, the plaintiffs they never raised objection even having full knowledge of the circumstances and the order delivery of possession by the court. Moreover, the plaintiff even having knowledge of the circumstance never raised any objection to the preemption case and the subsequent sale to the defendant No. 4 and his purchase of 32 acres of land in dag No. 149. Therefore it is my considered finding that although the plaintiffs can claim title from suit land in respect of Dag No. 171 and Dag No. 157 but however, the plaintiffs cannot claim title to the 32

acres of land in dag No. 149 since they are barred by the principles of waiver, acquiescence and are barred by the principle of estoppels under section 115 of the Evidence Act 1872 arising from their inaction in not any raising objection to the preemption sale whatsoever followed by the subsequent events.

It appears that the plaintiffs petitioners during Trial produced some rent receipts pertaining to the suit land where the defendant opposite parties could produce rent receipts in respect of the .32 acres in Dag No. 149 only.

Under the foregoing facts and circumstances and in the light of the submissions made by the learned Advocate for both sides, from the discussions made above and relying upon the decisions cited by the learned Advocate for both sides, I find merit in this Rule in part with observation.

In the result, the Rule is made Absolute in part and the impugned judgment and decree dated 29.06.2008 (decree signed on 03.07.2008) passed by the Additional District Judge, 1st Court, Brahmanbaria in Title Appeal No. 112 of 1994 allowing the appeal reversing the judgment and decree dated 06.03.194 and 12.03.1994 passed by the Sub Judge (Joint District Judge), 1st Court, Brahmanbaria in Title Suit No. 170 of 1985 decreeing the suit is hereby set aside and the Rule made absolute in part so far as it relates to the suit land comprising in plot No. 171 and

plot No. 157 but the suit land dag No. 149 comprising of 32 acres of land shall remain with the defendants appellant opposite parties.

The order of status-quo granted earlier this court is hereby re-called and vacated.

Send down the lower court's records at once.

Communicate the order at once.

Shokat(A.B.O)